

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NORTHEASTERN DIVISION**

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UNIVERSAL LIFE CHURCH )  
MONASTERY STOREHOUSE, ET AL. )

*Plaintiffs,* )

v. )

WAYNE NABORS, ET AL., )

*Defendants.* )

No. 2:19-cv-00049

Chief Judge Waverly Crenshaw  
Magistrate Judge Alistair Newbern

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**DEFENDANTS' MOTION TO DISMISS PLAINTIFF JAMES WELCH  
FOR FAILURE TO APPEAR AND TO STRIKE HIS DECLARATION**

Pursuant to Rules 37(d)(1)(A)(i) and 41(b) of the Federal Rules of Civil Procedure, Defendants Wayne Nabors, in his official capacity as county clerk for Putnam County, Tennessee, Herbert H. Slatery III, in his official capacity as Attorney General and Reporter for the State of Tennessee; Jennings H. Jones, in his official capacity as District Attorney General for Rutherford County, Tennessee; Neal Pinkston, in his official capacity as District Attorney General for Hamilton County, Tennessee; Bryant C. Dunaway, in his official capacity as District Attorney General for Putnam County, Tennessee; Kim R. Helper, in her official capacity as District Attorney General for Williamson County, Tennessee; and Bill Lee, in his official capacity as Governor of the State of Tennessee, respectfully ask this court to dismiss Plaintiff James Welch from this action and to strike the Declaration he submitted (Doc. 15) in support of Plaintiffs' motion for a temporary restraining order. While not joining in on this Motion, Defendant Clerks Elaine Anderson, William Knowles, and Lisa Duke Crowell do not oppose this Motion.

As explained more fully in the accompanying memorandum, the sanction of dismissal of Mr. Welch as a party to this case is warranted here, and the Plaintiffs should not be permitted to rely on a declaration by a Plaintiff who has refused to appear for his deposition. Mr. Welch knowingly and purposefully failed to appear at his properly noticed deposition, has failed to communicate any reason for not appearing, has since refused to respond to any communications from his counsel, and has failed to continue to prosecute this case. Exhibit A to Motion to Withdraw as Counsel for James Welch, Doc. 120-1. Defendants would be prejudiced by allowing Mr. Welch to remain in the case despite his refusal to submit to discovery and by any use of his Declaration in this case given their inability to depose him. The Plaintiffs who would remain in the case after Mr. Welch's dismissal would suffer no prejudice from his dismissal or from striking his Declaration.

Accordingly, Mr. Welch should be dismissed as a party to this case for failure to appear pursuant to Fed. R. Civ. P. 37(d)(1)(a)(i) and for failure to prosecute his claim pursuant to Fed. R. Civ. P. 41(a). Further, his declaration in support of Plaintiffs' motion for a temporary restraining order should be stricken.

The moving Defendants have conferred with Plaintiffs' counsel and counsel for the other defendants about Mr. Welch and the relief sought in this motion. L.R. 7.01. Having moved to withdraw as Mr. Welch's counsel, Plaintiffs' counsel take no position on the relief sought in this motion. Counsel for other defendants do not oppose the relief sought in this motion.

Given that Mr. Welch's counsel has moved to withdraw from his representation, Motion to Withdraw as Counsel for James Welch, Doc. 120, Defendants respectfully ask this Court to require Mr. Welch to indicate whether he would like to continue with this case and/or notify this Court that he has retained new counsel within five business days of this motion.

Respectfully submitted,

/s/ Jeffrey G. Jones

Jeffrey G. Jones, #12690  
1420 Neal Street, Suite 201  
P.O. Box 655  
Cookeville, TN 38503  
(931) 372-9123  
jjones@wimberlylawson.com

/s/ Jonathan David Shaub

LESLIE ANN BRIDGES  
Senior Deputy of Public Protection Section  
and Counsel to the Attorney General  
JONATHAN DAVID SHAUB (BPR 035915)  
Assistant Solicitor General  
P.O. Box 20207  
Nashville, Tennessee 37202-0207  
Tele: (615) 253-5642  
jonathan.shaub@ag.tn.gov

## **CERTIFICATE OF SERVICE**

I hereby certify that on the 10<sup>th</sup> day of October, 2019, I filed the foregoing electronically through the Court's CM/ECF System and thereby served the following:

Rocklan W. King III  
ADAMS & REESE LLP  
424 Church Street, Suite 2700  
Nashville, TN 37219  
Phone: (615)259-1450  
Fax: (615) 259-1470  
rocky.king@arlaw.com

Lucian T. Pera  
ADAMS & REESE LLP  
6075 Poplar Avenue, Suite 700  
Memphis, TN 38119  
Phone: (901) 524-5278  
Fax: (901) 524-5378  
lucian.peru@arlaw.com

Ambika K. Doran  
Bruce E.H. Johnson  
Robert E. Miller  
DAVIS WRIGHT TREMAINE LLP  
920 Fifth Avenue, Suite 3300  
Seattle, WA 98104  
Phone: (206) 622-3150  
Fax: (206) 757-7700  
brucejohnson@dwt.com  
ambikadoran@dwt.com  
robertmiller@dwt.com.

*Attorneys for Plaintiffs*

Lisa M. Carson  
Lee Ann Thompson  
BUERGER, MOSELEY & CARSON, PLC  
306 Public Square  
Franklin, TN 37064  
Phone: (615) 794-8850  
lcarson@buergerlaw.com  
lthompson@buergerlaw.com

*Attorneys for Defendant Elaine Anderson*

Mary Neill Southerland  
Rheubin Taylor  
Sharon McMullan Milling  
HAMILTON COUNTY ATTORNEY  
204 Courthouse, 625 Georgia Avenue  
Chattanooga, TN 37402  
Telephone: (423) 209-6150  
neills@hamiltontn.gov  
rtaylor@hamiltontn.gov  
sharonm@hamiltontn.gov

*Attorneys for Defendant William Knowles*

Nicholas C. Christiansen  
Daniel W. Ames  
COPE, HUDSON, REED & McCREARY,  
PLLC  
16 Public Square North  
Murfreesboro, TN 37133  
Telephone: (615) 893-552  
Fax: (615) 849-2135  
nchristiansen@mborolaw.com  
dames@mborolaw.com

*Attorneys for Defendant Lisa Duke Crowell*

Leslie Ann Bridges  
Senior Deputy and Counsel to the  
Attorney General of the State of Tennessee  
301 6th Avenue North  
Nashville, TN 37243  
Leslie.Bridges@ag.tn.gov  
Jonathan David Shaub  
Assistant Solicitor General to the  
Attorney General of the State of Tennessee  
301 6th Avenue North  
Nashville, TN 37243  
Telephone: (615) 253-5642  
[Jonathan.shaub@ag.tn.gov](mailto:Jonathan.shaub@ag.tn.gov)

*s/ Jeffrey G Jones*  
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Jeffrey G. Jones